UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID SCHUDEL, et al., et ux., Plaintiffs, vs. GENERAL ELECTRIC COMPANY and KAISER ALUMINUM AND CHEMICAL CORPORATION, Defendants.	No. CS-92-081-FVS ORDER RE MOTIONS TO AMEND AND CERTIFY (Filed Jan. 17, 1995)

BEFORE THE COURT are motions to amend Order Re Post-Trial Motions,[1] and to authorize appeals from it. All motions were heard without oral argument on January 13, 1995.

CLAIM OF SANDRA SCHUDEL

Relief Requested

Mr. Timothy Schudel alleged that he suffered various injuries while working on the Kaiser cleanup project. His wife, Sandra Schudel, brought separate claims for loss of consortium based upon the injuries her husband allegedly suffered. Mrs. Schudel's loss-of-consortium claims were not addressed in the Order Re Post-Trial Motions. Now that Timothy Schudel's claims have been

[1] The order was entered on November 25, 1994. It is docketed as pleading 571.

dismissed with prejudice, the defendants move the Court to dismiss Sandra Schudel's loss-of-consortium claims.

Ruling

The defendant's motion to amend (Ct. Rec. 574) is granted. Ms. Sandra Schudel's claims against the defendants will be dismissed with prejudice.

MOTION FOR NEW TRIAL

Relief Requested

After the jury returned its verdicts, the defendants moved for a new trial (Ct. Rec. 486). Except in the case of Deborah Williams, the Court did not address the merits of the defendants' motion. (In her case, the defendant's motion was denied.) The defendants now move the Court, pursuant to Fed.R.Civ.P. 50(c)(1), to issue a conditional ruling with respect to the other plaintiffs.

Ruling

The defendant's motion for new trial will be denied with respect to all plaintiffs.

HOPKINS' MOTION TO RECONSIDER

Relief Requested

Plaintiffs Ruth Hopkins and John Hopkins move the Court to reconsider its decision vacating the verdicts in their favor and ordering a new trial. If the Court declines to do so, Ruth Hopkins moves the Court to clarify its

order regarding her claims. She notes that the Order Re Post-Trial Motions dismisses all non-respiratory claims. She wants to know whether the Court intended to preclude her from recovering for depression (allegedly) spawned by her respiratory problems.

Ruling

The Hopkins' motion for reconsideration (Ct. Rec. 580) is denied except with respect to Ruth Hopkins's request for clarification of the Court's ruling regarding recovery of damages for depression. If, upon retrial, Ruth Hopkins proves that she suffered depression as a result of respiratory problems caused by the defendants, she may recover damages for her depression.

RULE 54(b)

Relief Requested

Both sides move the Court to authorize appeals of the judgments adjudicating the claims of Deborah Williams, Dan Glass, David Schudel, Craig Thompson, Tim Schudel, and Sandra Schudel. Fed.R.Civ.P. 54(b) (1994).[2] In addition, plaintiffs Kathrene Froese, Merlin Carlson,

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[2] Rule 54(b) states, in pertinent part, "When more than one claim for relief is presented in an action, . . . , or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

Ruth Hopkins, and John Hopkins move the Court to permit them to appeal the order granting a new trial.

Analysis

Under Rule 54(b), the Court must first determine whether a final judgment exists. *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 7, 100 S.Ct. 1460, 1464, 64 L.Ed.2d 1 (1980). Once that task has been completed, the Court must decide whether there is any just reason to delay the appellate process. *Id.* at 8, 100 S.Ct. at 1465. In doing so, the Court must consider both the administrative impact of releasing claims for appeal, and "the equities involved." *Id.* at 8, 100 S.Ct. at 1465.

1. Existence of final judgments

The claims of ten plaintiffs are at issue in this action. Now that the Court has entered its Order Re Post-Trial Motions, the claims of Deborah Williams, Dan Glass, David Schudel, Craig Thompson, Tim Schudel, and Sandra Schudel have been fully adjudicated. What of the claims of Kathrene Froese, Merlin Carlson, Ruth Hopkins, and John Hopkins?

In its order, the Court ruled that these four plaintiffs (*i.e.*, Kathrene Froese, Merlin Carlson, Ruth Hopkins, and John Hopkins) could not recover damages for certain (alleged) injuries. The judgments which had been entered in their favor were vacated, and a new trial was ordered. In other words, the order limited damages, but left their negligence claims otherwise unresolved pending a new

trial. As a result, insofar as Kathrene Froese, Merlin Carlson, Ruth Hopkins, and John Hopkins are concerned, the order is not a final judgment. *See Arizona State Carpenters Pension Trust Fund v. Miller*, 938 F.2d 1038, 1040 (9th Cir.1991) (holding that an order dismissing a claim for punitive damages was not final).

2. No just reason for delay

(a) Dan Glass, David Schudel, Craig Thompson, Tim Schudel, and Sandra Schudel

The record is now complete with respect to these five claims. Nothing that might occur in district court will affect appellate review of these dismissals. It is now up to the Court of Appeals to determine whether each dismissal was proper. In doing so, the Court of Appeals will have to review each claim separately. Consequently, authorizing these five plaintiffs to appeal will not result in unwarranted duplication of appellate effort.

(b) Deborah Williams

The verdict in favor of Ms. Williams was upheld. Appellate review of that verdict will facilitate adjudication of those claims which must be retried.

3. The four remaining claims

The Court ordered a new trial with respect to the claims of Kathrene Froese, Merlin Carlson, Ruth Hopkins, and John Hopkins. An order granting a new trial is interlocutory. As a general rule, it is not appealable under

28 U.S.C. § 1291. *Roy v. Volkswagenwerk Aktiengesellschaft*, 781 F.2d 670, 671 (9th Cir.1985); *Eaton v. National Steel Products Company*, 624 F.2d 863, 864 (9th Cir.1980). There is an exception to that rule, however. An order granting a new trial may be appealed if the district court no longer had jurisdiction to do so. *See Eaton*, 624 F.2d at 864.

Here, the plaintiffs moved to strike the defendants' post-trial motions, arguing that they were untimely. The Court denied the plaintiffs' motion, and granted post-trial relief. Should the Court of Appeals disagree with this Court's assessment of the timeliness of the defendants' post-trial motions, the Court of Appeals will have to determine whether this Court had authority to enter its Order Re Post-Trial Motions. Thus, the *Eaton* exception applies.

Ruling

There is no just reason to delay appeal of the Order Re Post-Trial motions.

COST BILLS

Plaintiff Deborah Williams has submitted a revised cost bill. No objections have been filed. Ms. William's request will therefore be approved.

The defendants are now the prevailing parties with respect to the claims asserted by Dan Glass, David Schudel, Craig Thompson, Tim Schudel, and Sandra Schudel. The defendants move the Court (Ct. Rec. 274) for an order indicating that they have ten days from Rule

54(b) certification to file cost bills. Their request will be granted.

IT IS HEREBY ORDERED:

1. The defendants' motion to amend (Ct. Rec. 574) is granted. Ms. Sandra Schudel's claims against the defendants are dismissed with prejudice.

2. The defendants' motion for a conditional ruling (Ct. Rec. 574) is granted in part. The defendants' prior motion for a new trial (Ct. Rec. 486) is denied with respect to all plaintiffs.

3. The Hopkins' motion for reconsideration (Ct. Rec. 580) is denied except as indicated above.

4. The parties respective motions for Rule 54(b) certification (Ct. Recs. 574, 577) are granted.

(a) There is no just reason to delay appellate review of the Court's Order Re Post-Trial Motions (Ct. Rec. 571); and

(b) Since the Clerk has already entered judgment as directed by the Order Re Post-Trial Motions, that judgment (Ct. Rec. 572) will become the final judgment for purposes of Rule 54(b) upon entry of this order.

5. Deborah Williams's cost bill is approved.

6. The defendants are to submit a cost bill with respect to the claims of Dan Glass, David Schudel, Craig Thompson, Tim Schudel, and Sandra Schudel within ten days of entry of this order.

7. Any other pending motions are denied as moot.

IT IS ORDERED. The Clerk is hereby directed to file this order, furnish copies to counsel, and close the case.

DATED this 13 day of January 1995.

/s/ Fred Van Sickle
FRED VAN SICKLE
United States District Judge